

SECTION 9.30 EMPLOYEE PROBLEMS WITH SIGNIFICANT WORK IMPACT

Last Update: 2/06

There are instances when employee problems in the workplace significantly impact an employee's ability to perform his/her job. Generally, these issues fall into one of four categories:

- physical impairment or restrictions
- psychological impairment or inability to perform duties
- behavior that indicates employees are a danger to themselves or others
- impairment due to use/abuse of chemical substances.

These issues are difficult to manage and require a case-by-case approach. The employer has a right and a responsibility to maintain a safe, productive workplace. The impaired worker also has a right to be treated fairly and equitably in these situations, and to have his/her confidentiality rights protected.

If the employer has well documented reasons to question the employee's ability to perform the duties of the job, the employer has a right to require the employee to provide information about that ability. In situations where health and safety of the employee or others in the workplace may be in jeopardy, a supervisor may require information about the employee's ability to function safely in the workplace. In these instances, the employer may require the employee to seek an evaluation from an appropriate professional as to the employee's fitness for duty. When the employer requires such an evaluation, any costs not covered by the employee's health insurance are the responsibility of the employer.

Physical Impairment

When an employee is physically unable to perform the full range of duties of his/her job, the supervisor should ask the employee to see a physician (either the employee's or one of management's choosing) for an evaluation of the problem. The supervisor should write a letter to the physician stating the reason for the request for evaluation, providing a copy of the employee's job description and requirements and asking the physician if the employee can physically perform these duties, whether there are any restrictions, and for how long these restrictions would apply. The supervisor and management then need to decide how to deal with the individual situation, making reasonable accommodations where possible.

Psychological Impairment

When an employee is unable to perform the duties of his/her job and/or is exhibiting bizarre or unacceptable behavior, the supervisor can ask the employee to see a physician, psychiatrist, or psychologist for an evaluation of the ability to do their job. You must have very good, objective, documentation of the reasons for asking an employee to seek an evaluation. Corroborating witnesses are helpful. To help you in deciding whether a psychological evaluation is indicated and how to deal with the employee, a management consultation with the Employee Assistance Program (EAP) can be most helpful. Generally, some signs of the need for psychological evaluation are:

- extreme mood swings
- violent outbursts
- threats to others
- inability to attend to tasks
- consistently not getting work done
- behavior that is clearly not usual and consistent with your work environment.

When you are dealing with one of these situations, and have coached and counseled the employee to help make changes in their behavior and/or performance, with little or no change, you may need to proceed with a psychological evaluation.

After consulting with your personnel officer and the EAP, meet with the employee and discuss the need for an evaluation and set time frames for completion of such an evaluation. Select an appropriate professional to conduct the evaluation (the EAP can provide names). Write a letter requesting the evaluation including the following information:

1. The reasons for the evaluation. Describe the problems/behaviors in as much detail as possible.
2. The employee's job description, essential job functions, performance expectations, and any information that might be helpful regarding job requirements.
3. Request the results of the evaluation, recommendations as to fitness for duty or ability to perform the job, and any other information you need to make appropriate decisions as to reasonable accommodations or the need for the employee to be on sick leave or restricted duty, etc.

If the person's presence at work is detrimental to himself/herself or others (safety issues), you can require the individual to be away from the workplace until the evaluation is completed and you have the information needed.

Depending on the circumstances, time away from the workplace may be taken as sick leave, vacation, or leave without pay. Consult your personnel officer for specific assistance. When the individual returns to the workplace, it is important to discuss job duties and expectations. It is also helpful to have talked with the professional who is releasing the person to work regarding anything you might do to assist the transition back to the workplace.

Imminent Danger To Self Or Others

When an individual is deemed to be of imminent danger to themselves or others (exhibiting violent or threatening behavior), the person needs to be removed from the workplace. Have a corroborating witness if at all possible. Talk calmly with the individual if possible, remove others from the immediate vicinity, and call the designated security personnel to have the employee removed from the workplace. Notify the person(s) the employee has designated to be notified in an emergency. The individual should be placed on sick leave until released by the appropriate authorities to return to work. You may require an evaluation as above. When the person returns to the workplace, it is important to discuss job expectations, etc., with them. Contact your personnel officer for consultation regarding any disciplinary action that may need to be taken.

Impairment Due To Use Or Abuse Of Chemical Substances

Use of chemical substances on the job is prohibited (Executive Order 38 and DAS-HRE Policy). Coming to work with evidence of usage is also prohibited. See the State's Substance Abuse Policy and supervisory guidelines for assistance in this area.

When an employee is unable to perform the duties of their job and you have reason to believe that the use/abuse of chemicals is the problem, you need to deal with the individual on the basis of their job performance. Disciplinary action may be indicated. A referral to the Employee Assistance Program (EAP) may also be helpful in solving the problem. See the Substance Abuse Policy Guidelines for further direction. Contact your personnel officer and/or the EAP for a supervisory consultation.

Follow-Up

In any of the above circumstances, the return to work and periodic follow-up are crucial for success. If disciplinary action has been a part of the situation, a return to work agreement detailing expectations is usually necessary. It is always important to discuss job duties and expectations. You need to acknowledge and support positive changes and provide feedback to the employee. Hold periodic discussions about how things are going and have the employee assess his or her own progress.